IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9338 of 2001
to
SPECIAL CIVIL APPLICATION No 9349 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RABARI HATHIYA VEJA

Appearance:
MR AD OZA, GOVERNMENT PLEADER for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/12/2001

COMMON ORAL JUDGEMENT

In these petitions under Article 227 of the Constitution, the State of Gujarat has challenged the judgment and award 21.10.2000 passed by the Labour Court, Junagadh in various references.

2. The respondents are served, but none appears for them.

3. The respondents herein were employed as daily wager casual labour by the Forest Department of the State Government. The respondents raised an industrial dispute challenging the termination of their services. The disputes were referred to the Labour Court. The employer-State of Gujarat raised a contention that the Forest Department for which respondents were employed was not carrying on any industry within the meaning of the Industrial Disputes Act. The Labour Court negatived this contention and further held that since the termination of the respondents' services was without complying with the provisions of Section 25F of the Industrial Disputes Act, the termination was illegal and, therefore, the Labour Court passed the award for reinstatement with continuity of service and also directed the State Government to pay 75% backwages to the respondents.

It is the aforesaid award which is under challenge in these petitions.

4. Mr AD Oza, learned Government Pleader appearing for the State of Gujarat has relied on the decision of the Apex Court in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT (2001) 3 SC 326 in support of his contention that since the Forest Department is not an industry, the award under challenge is required to be quashed and set aside.

5. In the State of Gujarat vs. Pratamsingh Narsinh Parmar (Supra), (wherein the respondent in that case was appointed as a Clerk) the question raised for consideration was whether the Forest Department in the State of Gujarat can be held to be an industry within the meaning of the said expression under the Industrial Disputes Act; the order of termination without complying with the provisions of Section 25F of the Industrial Disputes Act gets vitiated. In the said decision, the Court held as under :-

"5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes `an industry'. Ordinarily, a Department of the Government cannot be held to be

> an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot beheld to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (JT 1995 (9) SC 465) to hold that the Forest Department could be held to be `an industry'."

6. Having perused the impugned award and the pleadings, it is clear that the respondents had not pleaded in the statement of claim nor did they lead any evidence to show that the Forest Department was carrying on any industry within the meaning of the Industrial Disputes Act. The only ground on which the Labour Court negatived the contention of the State Government was reliance on the decision of the Apex Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa (1978(2) SCR 213). The Labour Court proceeded on the basis as if the burden of proof was on the employer to show that the employer was not an industry within the meaning of the Industrial Disputes Act. However, in view of the aforesaid principle laid down by the Apex Court in the case of the State of Gujarat itself and that too in the case of the Forest Department, it is obvious that it was for the respondents herein to assert and show that the Forest Department was carrying on an industrial activity for which the respondents were employed. In absence of any such material on record, the award passed by the Labour Court has to be set aside without prejudice to any further proceedings which the respondents may take out in light of the aforesaid principle laid down by the Apex Court.

7. Subject to the aforesaid liberty, the petitions are allowed. The impugned judgment and award 21.10.2000 passed by the Labour Court, Junagadh in various references is set aside in so far as the same is challenged in the present group of petitions.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

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